



Office of the
Medicaid Inspector
General

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Audit of Encounter Data for Inappropriate Pharmacy Services Reported by Medicaid Managed Care Organizations From January 1, 2017 to December 31, 2021

**Final Audit Report
Audit #: 22-5510**

**Fallon Health Weinberg PACE
Plan ID #: 04190745**



Office of the
Medicaid Inspector
General

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

January 25, 2023

Kelly Voigt, CFO
Fallon Health Weinberg PACE
461 John James Audubon Parkway
Amherst, New York 14228-1141

RE: Final Audit Report
Audit #: 22-5510
Plan ID #: 04190745

Dear Kelly Voigt:

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for Fallon Health Weinberg PACE (Plan).

In accordance with Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York Section 517.5 and the Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan/Health and Recovery Plan Model Contract, Sections 30, 31 and 32 of the New York State Public Health Law, OMIG identified instances where the controlled substance prescription was filled more than 30 days after it was initiated by the prescriber (Exhibit A). The audit reviewed pharmacy services reported by Medicaid Managed Care Organizations with payment dates included in the period beginning January 1, 2017 and ending December 31, 2021 and the universe consisted of only the claims identified. The attached Final Audit Report represents the final determination on the issues found during OMIG's audit.

The Plan's January 13, 2023 response to the Draft Audit Report dated October 19, 2022 stated that the Plan is in agreement with the Draft Audit Report findings. As a result, the overpayments identified in this Final Audit Report remain unchanged from those cited in the Draft Audit Report. The total amount due is \$8,365.74.

Exhibit A referenced in this Final Audit Report will be sent via the Health Commerce System (HCS). If contact information has changed, please provide an updated contact person with a dedicated HCS account to Trevor Bauman through email at Trevor.Bauman@omig.ny.gov to obtain the Exhibit A. If you have any questions or comments concerning this report, please contact Lindsay Foote at (585)238-8534 or through email at Lindsay.Foote@omig.ny.gov. Please refer to audit number 22-5510 in all correspondence.

Sincerely,

Charles Falkner, Audit Manager
Division of Medicaid Audit
Office of the Medicaid Inspector General

LLF: tab
Exhibits
Certified Mail #: 7019-2280-0000-6788-1760
Return Receipt Requested

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Background, Objective, and Audit Scope

Background

The New York State Department of Health (DOH) is the single state agency responsible for the administration of the Medicaid program. As part of its responsibility as an independent entity within DOH, the Office of the Medicaid Inspector General (OMIG) conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assessing provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth in New York Public Health Law, New York Social Services Law, the regulations of DOH (Titles 10 and 18 of the New York Codes Rules and Regulations), the regulations of the Office of Mental Hygiene (Title 14 of the New York Codes Rules and Regulations), the regulations of the Education Department (Title 8 of the New York Codes Rules and Regulations), DOH's Medicaid Provider Manuals and *Medicaid Update* publications.

In accordance with 18 NYCRR Parts 517 and 518 and pursuant to the Contract, specifically Section 19.6 (OMIG's Right to Audit and Recover Overpayments Caused by Contractor's Misstated Encounter Data), Section 19.7 (OMIG Audit Authority), OMIG can recover the Plan's payments to providers for improper pharmacy services.

Pharmacy is a professional practice, which includes a number of activities that are necessary for the provision of drugs for patients as ordered by persons authorized under State law to prescribe drugs. Pharmacies are licensed and currently registered by the New York State Board of Pharmacy, Department of Education. The pharmacy must comply with all applicable provisions of State Law including Article 137 of the Education Law, Articles 1 and 33 of the Public Health Law, and the *Pharmacy Guide to Practice* (Pharmacy Handbook) issued by the Department of Education. The specific standards and criteria for pharmacies are outlined in Title 10 NYCRR Part 80 and Sections 85.20-22 and Title 18 NYCRR Section 505.3. The *NYS Medicaid Program Pharmacy Manual Policy Guidelines* also provide program guidance for claiming Medicaid reimbursement for pharmacy services. The Managed Care and/or pharmacy benefit manager (PBM) provider agreements, pharmacy manuals and/or procedures provide additional program guidance for claiming Medicaid managed care reimbursement for pharmacy services.

The Medicaid Managed Care / Family Health Plus / HIV Special Needs Plan / Health Recovery Plan Model Contract provides benefit administration and encounter reporting guidance to Managed Care Medicaid plans and subcontractors. OMIG performed an audit of pharmacy services for controlled substance prescriptions filled beyond 30 days after prescriber initiation.

Objective

The objective of this audit was to assess the Plan's adherence to applicable laws, regulations, rules and policies governing the New York State Medicaid program and to:

- identify and recover instances where the plan reported an original controlled substance prescription order filled more than 30 days after it was initiated by the prescriber.
- identify and recover instances where the plan reported a refilled prescription for an original controlled substance prescription order filled more than 30 days after it was initiated by the prescriber.

Audit Scope

The audit identified pharmacy services reported by the Plan that did not meet required regulatory standards and time limits for payment dates included in the review period beginning January 1, 2017 and ending December 31, 2021.

Regulations of General Application

Each audit finding is supported by relevant regulations, policy statements and manuals. In addition, the audit findings in this audit are supported by regulations of general application to the Medicaid program. These regulations are provided below.

“By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department.”
18 NYCRR Section 504.3

“Fee-for-service providers. (1) All providers . . . must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor . . . must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later. (2) All information regarding claims for payment submitted by or on behalf of the provider is subject to audit for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later, and must be furnished, upon request, to the department . . . for audit and review.”
18 NYCRR Section 517.3(b)

“All bills for medical care, services and supplies shall contain: (1) patient name, case number and date of service; (2) itemization of the volume and specific types of care, services and supplies provided (including for a physician, his final diagnosis, and for drugs, the prescription filled); (3) the unit price and total cost of the care, services and supplies provided; . . . and (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are due and owing; . . . that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment; . . . and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided....”
18 NYCRR Section 540.7(a)(1)-(3) and (8)

“An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake.”
18 NYCRR Section 518.1(c)

“Vendor payments for medical care and other items of medical assistance shall not be made unless such care or other items of assistance have been furnished on the basis of the appropriate authorization prescribed by the rules of the board and regulations of the department.”

18 NYCRR Section 540.1

“The department may require repayment from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim.”

18 NYCRR Section 518.3(a)

“The department may require repayment for inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished....”

18 NYCRR Section 518.3(b)

“Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client’s medical record.”

18 NYCRR Section 518.3(b)

Audit Findings

OMIG issued a Draft Audit Report to the Plan on October 19, 2022 that identified \$8,365.74 in Medicaid overpayments. The Plan's January 13, 2023 response (Exhibit B) to the Draft Audit Report dated October 19, 2022 stated that the Plan is in agreement with the Draft Audit Report findings. As a result, the total overpayment of \$8,365.74 remains unchanged from the overpayment cited in the Draft Audit Report.

OMIG identified the following finding:

Original Prescription for a Controlled Substance Filled Beyond Allowed Timeframe

“(e) Such official New York State prescription or an out-of-state written prescription for a patient enrolled in a hospice program or for a patient residing in a residential health care facility (RHCF) may be transmitted by the practitioner, or a person authorized by the practitioner, to the dispensing pharmacy by facsimile, provided: (1) the hospice program or RHCF is licensed or approved by the department; (2) the dispensing pharmacy has a written agreement or contract with the hospice program or RHCF to dispense controlled substances to a patient of such program or facility; (3) the practitioner shall note on the prescription that the patient is a “hospice patient” or “RHCF patient” and (4) within 72 hours, the prescribing practitioner shall cause to be delivered to the pharmacist the original official New York State prescription or the original out-of-state written prescription. If the pharmacist fails to receive such prescription, he/she shall notify the department in writing or electronically within seven days from the date of dispensing the substance.”
10 NYCRR Section 80.67(e)

“An official New York State prescription, an out-of-state written prescription, or an electronic prescription for a Schedule III, IV, or V controlled substance, other than such substances as listed in section 80.67 of this Part, may be refilled, but not more than the number of times specifically authorized by the prescriber upon the prescription; provided, however, no such authorization shall be effective for longer than six months from the date the prescription is signed and that not more than five refills are made. When the initial prescription is issued for a quantity of substance in excess of a 30-day supply under the authority of subdivision (c) of this section, the prescription may only be refilled once.”

10 NYCRR Section 80.69(g)

Pharmacists; dispensing schedule II substances and certain other controlled substances . . . “(a) A licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6806 of the Education Law and regulations thereunder in a registered pharmacy, may, in good faith and in the course of his/her professional practice, sell and dispense to an ultimate user schedule II controlled substances or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part, provided they are dispensed pursuant to an official New York State prescription, an out-of-state prescription or an electronic prescription delivered within 30 days of the date such prescription was signed by the authorized practitioner or an oral prescription where permitted.”

10 NYCRR Section 80.73(a)

“(1) The endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. The prescription information shall be filed electronically with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the department, not later than 24 hours after the substance was delivered. A waiver allowing a pharmacy to make such filings within a longer period of time may be issued by the commissioner based upon a showing of economic hardship, technological limitations that are not reasonably within the control of the pharmacy, or other exceptional circumstance demonstrated

by the pharmacy. Such waiver and any subsequent waiver shall be applied for in the same manner and shall be subject to the same requirements as specified in section 80.63(c)(2)(x) of this Part and, if granted, such waiver shall not provide for a filing period longer than the 15th day of the next month following the month in which the substance was delivered. Pharmacies delivering prescriptions by mail or licensed express delivery services shall file the prescription information with the Bureau of Narcotic Enforcement, utilizing a transmission format acceptable to the department, not later than 72 hours after the substance was shipped from the pharmacy. The information filed with the department shall include but not be limited to: (i) pharmacy prescription number; (ii) pharmacy's national identification number; (iii) patient name, in the case of an animal, the patient name field shall be filled with the name of the animal's owner; (iv) patient address, including street, city, state, ZIP code; (v) patient date of birth; (vi) patient's sex; (vii) date prescription filled; (viii) metric quantity; (ix) national drug code number of the drug; (x) number of days supply; (xi) prescriber's Drug Enforcement Administration number; (xii) date prescription issued; (xiii) serial number of official prescription form, or an identifier designated by the department; (xiv) payment method; (xv) number of refills authorized; (xvi) refill number; . . ."

10 NYCRR 80.73(f)

"(j) A pharmacist may partially fill an official New York State prescription for a schedule II controlled substance or those schedule III or schedule IV controlled substances listed in section 80.67(a) of this Part provided that: (1) the pharmacist does not have a sufficient quantity to fill a prescription and he/she makes a notation of the quantity supplied on the prescription. The remaining portion of the prescription may be filled within 72 hours of the first partial filling. However, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription; (2) the patient is a resident in a residential health care facility ("RHCF") which is licensed or approved by the department; or (3) the patient has been diagnosed as being terminally ill; (4) when such prescription is partially filled in accordance with paragraph (2) or (3) of this subdivision, the pharmacist shall: (i) record on the prescription whether the patient is "terminally ill" or is a "RHCF patient"; and (ii) record on the prescription the date of the partial filling, quantity dispensed, quantity remaining and the signature of the dispensing pharmacist; (5) the prescription shall be valid for a period not to exceed 30 days from the date the prescription was issued by the practitioner unless terminated sooner upon notification from the practitioner of the discontinuance of medication. All partial fillings filled under subdivision (l) of this section must occur within 30 days from the date the prescription was issued, except that partial fillings of prescriptions issued for more than a 30 day supply for patients residing in a residential healthcare facility or for patients enrolled in a hospice program that is licensed or approved by the department must occur within 60 days from the date the prescription was issued. (6) the date of filling on the prescription shall be the date when the prescription has been filled to completion or the date when the pharmacy is notified by the practitioner that the prescription has been discontinued."

10 NYCRR Section 80.73(j)

Pharmacists; dispensing schedule III, IV and V controlled substances . . . "(a) Except as provided in sections 80.67 and 80.73 of this Part, a licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6808 of the Education Law and regulations thereunder, in a registered pharmacy may, in good faith and in the course of his professional practice, dispense to an ultimate user, controlled substances in schedule III, IV or V provided they are dispensed pursuant to a prescription presented within 30 days of the date such prescription was signed by an authorized practitioner."

10 NYCRR Section 80.74(a)

"(e) The pharmacist filling the prescription shall endorse on such prescription his/her signature, the date of filling, and the number of the prescription under which it is recorded in the pharmacy prescription file."

Such endorsed prescription shall be retained by the proprietor of the pharmacy for a period of five years. Prescription information from the filling of such prescription shall be filed with the department in accordance with section 80.73(f) of this Part.”
10 NYCRR Section 80.74(e)

“(a) A licensed, registered pharmacist, or a pharmacy intern acting in conformity with the provisions of section 6808 of the Education Law, and regulations thereunder, in a registered pharmacy may, in good faith and in the course of his/her professional practice, dispense to an ultimate user, controlled substances in schedule II, III, IV and V upon delivery to such pharmacist of an out-of-state prescription within 30 days of the date such prescription was signed by an authorized practitioner.”
10 NYCRR Section 80.78(a)

“No written order for drugs may be refilled more than six months after the date of issuance, nor more than five times within a six month period, . . . (3) Refills must bear the prescription number of the original written order.”
18 NYCRR Section 505.3(d)(2) and (3)

“The Office of the Medicaid Inspector General (OMIG) can perform audits of the Contractor’s submitted encounter data after DOH has reviewed and accepted the Contractor’s encounter data submission. If the audit determines the Contractor’s encounter data was incorrectly submitted and the Contractor received additional or higher Medicaid managed care capitation rate payments and/or Supplemental Newborn Capitation Payments and/or Supplemental Maternity Capitation Payments, and/or other reimbursement due to the incorrect encounter data, OMIG can recover from the Contractor the additional Medicaid funds that the Contractor received because of the encounter data misstatement....Nothing in this section shall limit SDOH, OMIG or any other auditing entity from the development of alternative audit and/or recovery rights for time periods prior to the contract period, during the contract period, or subsequent to the contract period or limit other remedies or rights available to SDOH, OMIG or any other auditing entity relating to the timeliness, completeness and/or accuracy of the Contractor’s reporting submission.”
Contract, Section 19.6

“In accordance with New York State Public Health Law Sections 30 – 36, and as authorized by federal or state laws and regulations, the Office of the Medicaid Inspector General (OMIG) may review, audit, and investigate contracts, encounter data, cost reports, plan benefit design or any other information used, directly or indirectly, to determine expenditures, claims, bills and all other expenditures of medical assistance program funds to determine compliance with federal and state laws and regulations and take such corrective actions as are authorized by federal or state laws and regulations.”
Contract, Section 19.7

“ii) The parties acknowledge that the New York State Office of the Attorney General, SDOH, the Office of the Medicaid Inspector General (OMIG) and the Office of the State Comptroller (OSC) have the right to recover overpayments, penalties, and other damages from Participating Providers, Non-Participating Providers, Contractors, subcontractors, and third parties in the Contractor’s network as a result of any investigation, audit or action commenced by the New York State Office of the Attorney General, SDOH, OMIG, and OSC, including, but not limited to any litigation brought pursuant to State Finance Law § 187 et seq. or 31 U.S.C. § 3729 et seq. by, or on behalf of the New York State Office of the Attorney General. The Contractor shall not have a right to recover from the State any recovery obtained by the State pursuant to 31 U.S.C. § 3729 et seq., State Finance Law § 187 et seq., 18 NYCRR Parts 515, 516, 517, or 518, or other New York or Federal statutes, regulations or rules.”
Contract, Section 22.7(a)(ii)

“d) Nothing in this Agreement shall be construed to limit the authority of the New York State Office of the Attorney General, OMIG, OSC or SDOH to investigate, audit or otherwise obtain recoveries from any Participating Provider, Non-Participating Provider, Contractor, subcontractor, or third party.”

Contract, Section 22.7(d)

“For controlled substances, a pharmacist may not fill an original prescription more than thirty (30) days after it has been initiated by the prescriber.”

*NYS Medicaid Program Pharmacy Manual Policy Guidelines
Versions 2013-1 through 2019-1, Section I*

“Automatic refilling is not allowed under the Medicaid program. Automatic-refill programs offered by pharmacies are not an option for beneficiaries. . . .”

*NYS Medicaid Program Pharmacy Manual Policy Guidelines
Versions 2013-1 through 2019-1, Section I*

Exhibit A is a list of claims that were improperly billed to Medicaid, because the controlled substance prescription was filled more than 30 days after it was initiated by the prescriber. These resulted in overpayments in the amount of \$8,365.74. Based on this determination, the total amount due to DOH, as defined in 18 NYCRR Section 518.1, is \$8,365.74 (Exhibit A).

Do not submit claim voids in response to this Final Audit Report. Repayment instructions are outlined on the next page.

Repayment Options

In accordance with 18 NYCRR Part 518, which regulates the collection of overpayments, your repayment options are described below.

Option #1: Make a full payment by check, money order, or OMIG's Online Payment Portal within 20 days of the date of the Final Audit Report.

- The check should be made payable to the New York State Department of Health, should include the audit number on the memo line, and be mailed with the attached remittance advice to:

New York State Office of the Medicaid Inspector General
Bureau of Collections Management
800 North Pearl Street
Albany, New York 12204
Phone #: (518) 474-5878
Fax #: (518) 408-0593
Email: collections@omig.ny.gov

- If you elect to pay electronically through OMIG's Online Payment Portal, please visit <https://omig.ny.gov/online-payment-portal> or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.

Option #2: Enter into a repayment agreement with OMIG. If your repayment terms exceed 90 days from the date of the Final Audit Report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. OMIG's acceptance of a repayment agreement is based on your repaying the Medicaid overpayment as agreed. OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days, by telephone or email, as provided above.

Should you fail to select a payment option above within 20 days of the date of this Report, OMIG will initiate recoupment by withholding all or a part of your payments otherwise payable, in accordance with 18 NYCRR 518.6. Additionally, OMIG reserves the right to use any remedy allowed by law to collect the amount due. Pursuant to the State Finance Law Section 18(5), a collection fee equal to twenty two percent (22%) of the amount due, including interest, may be added to the amount owed.

Hearing Rights

The Plan has the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice.

If the Plan wishes to request a hearing, the request must be submitted in writing within sixty (60) days of the date of this notice to:

General Counsel
Office of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Questions regarding the request for a hearing should be directed to Office of Counsel, at (518) 408-5845.

In accordance with 18 NYCRR Section 519.18(a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon submission of objections to a draft audit or notice of proposed agency action."

If a hearing is held, the Plan may have a person represent it or the Plan may represent itself. If the Plan chooses to be represented by someone other than an attorney, the Plan must supply along with its hearing request a signed authorization permitting that person to represent the Plan at the hearing; the Plan may call witnesses and present documentary evidence on its behalf.

For a full listing of hearing rights please see 18 NYCRR Part 519.

Contact Information

Trevor Bauman, Auditor
Trevor.Bauman@omig.ny.gov
(585)238-8116

Lindsay Foote, Audit Supervisor
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Rochester, New York 14607

Mission

The mission of the Office of the Medicaid Inspector General is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high quality patient care.

Vision

To be the national leader in promoting and protecting the integrity of the Medicaid program.



Office of the
Medicaid Inspector
General

REMITTANCE ADVICE

Kelly Voigt, CFO
Fallon Health Weinberg PACE
461 John James Audubon Parkway
Amherst, New York 14228-1141

Plan ID #: 04190745

Audit #: 22-5510

Amount Due: **\$8,365.74**

Audit
Type

☒ Managed Care
☐ Fee-for-Service
☐ Rate

Checklist

1. To ensure proper credit, please enclose this form with your check.
2. Make checks payable to: New York State Department of Health.
3. Record the audit number on your check.
4. Mail the check to:

New York State Office of the Medicaid Inspector General
Bureau of Collections Management
800 North Pearl Street
Albany, New York 12204
Phone #: (518) 474-5878
Fax #: (518) 408-0593
Email: collections@omig.ny.gov

If you elect to pay electronically through OMIG's Online Payment Portal, please visit <https://omig.ny.gov/online-payment-portal> or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.